

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WOODFIN SUITE HOTELS, LLC and
PACIFIC HOTEL MANAGEMENT, LLC,

No. C 06-1254 SBA

ORDER

Plaintiffs,

v.

CITY OF EMERYVILLE,

Defendant.

Plaintiffs' Opposition to Defendant's Motion to Dismiss or for Judgment on the Pleadings and Motion for Summary Judgment, filed December 19, 2006, indicates that Plaintiffs seek the Court's permission to voluntarily dismiss this action without prejudice.

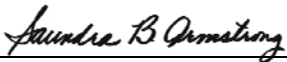
Federal Rule of Civil Procedure 41(a)(1) provides that a plaintiff may voluntarily dismiss an action before service of an answer or motion for summary judgment by the adverse party, or by stipulation. Plaintiffs state that Defendant has refused to so stipulate. However, Rule 41(a)(2) states that an action may be dismissed without prejudice by order of the court "upon such terms and conditions as the court deems proper." The decision whether to grant a voluntary dismissal under Rule 41(a)(2) is within the sound discretion of this Court, and the Court must "consider whether the defendant will suffer some plain legal prejudice as a result of the dismissal." *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982). The Court will consider whether significant discovery or pretrial preparations have taken place; prejudice does not result "simply when defendant faces the prospect of a second lawsuit or when plaintiff merely gains some tactical advantage." *Id.* See also *Wiesen v. Astrazeneca Pharmaceuticals, L.P. et al.*, 2006 WL 2529472 (N.D. Cal. Aug. 31, 2006).

The Court is inclined to grant Plaintiff's request for dismissal pursuant to Rule 41(a)(2). However, Defendant is ordered to show cause why such a request should not be granted, based on the standards articulated above. Defendant shall submit a response to this order in lieu of its reply brief on the Motion to Dismiss/Motion for Summary Judgment. Accordingly, Defendant's response is due no

1 later than **December 26, 2006.**

2 IT IS SO ORDERED.

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5 Dated: 12/20/06


SAUNDRA BROWN ARMSTRONG
United States District Judge